Supreme Court, U.S.
FILED
01262 FEB 13 2002
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No. _____

In The

Supreme Court of the United States

YALE GARBER AND STEPHEN G. WEIL,

Petitioners,

versus

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Eleventh Circuit's restrictive application of the public authority defense conflict with other circuits on a vital question of law, and compromise an accused's meaningful opportunity to present a complete defense as guaranteed by the due process provisions of the United States Constitution?

2. Does the unannounced use of a "blockbuster" jury instruction by a trial judge, when the jury was deliberating without any serious difficulty, render a verdict unfairly coercive in accelerating a jury's deliberations after seventeen days of trial testimony?

3. When the prosecution in a criminal case seizes defense evidence in the full and open presence of the jury, while announcing the evidence constitutes the fruit of the crime, and the jury is informed by the trial judge that the prosecution's action is valid, is the resulting conviction unfairly compromised in violation of due process?

4. Does an enhanced sentence for money laundering violate *Apprendi v. New Jersey* when a defendant is sentenced on the basis of a quantity of money not alleged in the indictment and for which the jury did not find guilt beyond a reasonable doubt?

LIST OF PARTIES

The parties to the proceedings in the lower tribunal are:

Yale Garber

Stephen G. Weil

United States of America

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

PROVISIONS OF LAW 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 5

I. The Eleventh Circuit's Restrictive Application Of The Public Authority Defense Conflicts With Other Circuits And Is Contrary To Due Process Protections 5

II. The Use Of A Blockbuster Jury Instruction When The Jury Is Deliberating Reasonably Is Unfairly Coercive And Prejudicial 7

III. The Seizure By The Prosecution Of Defense Evidence In Open Court Unfairly Compromised The Integrity Of The Jury To Deliberate On The Basis Of The Evidence 9

IV. *Apprendi* Prohibits A Sentence Enhancement Based On Evidentiary Factors Not Charged In The Indictment 11

CONCLUSION 12

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page

CASES

Allen v. United States, 124 U.S. 942 (1896) 4, 7, 8

Apprendi v. New Jersey, 530 U.S. 466 (2000) 4, 11, 12

Carter v. Kentucky, 450 U.S. 288 (1981)..... 10

Cheek v. United States, 498 U.S. 192 (1991)..... 6

Coffin v. United States, 156 U.S. 432 (1895)..... 10

Crane v. Kentucky, 476 U.S. 683 (1986)..... 7

Estelle v. Williams, 425 U.S. 501 (1976)..... 10

Glover v. United States, 531 U.S. 198 (2001) 12

Jones v. United States, 526 U.S. 227 (1999)..... 12

Ring v. Arizona, 2002 WL 27836, No. 01-488 (Jan. 11, 2002) 12

Taylor v. Kentucky, 436 U.S. 478 (1978)..... 10

United States v. Achter, 52 F.3d 753 (8th Cir. 1995) 5

United States v. Blair, 210 F.3d 285 (9th Cir. 2000) 5

United States v. Burgos, 55 F.3d 933 (4th Cir. 1995) 8

United States v. Chigbo, 38 F.3d 543 (11th Cir. 1994) 8

United States v. Fulcher, 250 F.3d 244 (3d Cir. 2001) 5

United States v. Gainey, 380 U.S. 63 (1965)..... 9

United States v. Graham, 758 F.2d 879 (3d Cir. 1985) 8

TABLE OF AUTHORITIES – Continued

Page

United States v. Mack, 229 F.3d 226 (3d Cir. 2000) 11

United States v. Norris, 143 F.Supp. 2d 243 (E.D.N.Y. 2001) 12

United States v. Parker, 267 F.3d 839 (8th Cir. 2001) 6

United States v. Pitt, 191 F.3d 751 (3d Cir. 1999) 6

United States v. Quintero-Barraza, 57 F.3d 836 (9th Cir. 1995) 8

United States v. Sanchez, 269 F.3d 1250 (11th Cir. 2001) 11

United States v. Scout, 112 F.3d 95 (8th Cir. 1997) 6

United States v. Silvern, 484 F.2d 879 (7th Cir. 1973) 8

United States v. Smith, 635 F.2d 716 (8th Cir. 1980) 8

In re Winship, 397 U.S. 358 (1970) 10

CONSTITUTION

U.S. Constitution, Fifth Amendment 1

STATUTES

28 U.S.C. § 1254 1

28 U.S.C. § 1291 1

RULES

Supreme Court Rule 13.1 1

PETITION FOR A WRIT OF CERTIORARI

Petitioners Yale Garber and Stephen G. Weil request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The decision of the Court of Appeals is unpublished, but is reproduced in the Appendix, at App. 1-5.

JURISDICTION

The Court of Appeals entered its judgment on November 15, 2001. Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254 and Supreme Court Rule 13.1. The appellate court had jurisdiction pursuant to 28 U.S.C. § 1291.

PROVISIONS OF LAW

U.S. Constitution, Fifth Amendment.

No persons shall . . . be deprived of life, liberty, or property without due process of law . . .

STATEMENT OF THE CASE

Petitioners are two elderly gentlemen with outstanding backgrounds as law abiding citizens. They became ensnared in an undercover money laundering sting operation targeting the Seminole Indians, known as Operation Seminole Wind and Operation Capos & Indians. Yale Garber, seventy-five years old, was a retired lawyer and best friend of Stephen G. Weil, a sixty-six year old career FBI confidential source who had worked with federal law enforcement agencies for more than twenty years. Both men were convicted of money laundering and sentenced to prison terms of sixty-three months (Garber) and eighty-three months (Weil). App. 2.

In 1997, government undercover agents orchestrated a sting operation to persuade prominent officials of the Seminole Indian Tribe to launder purported drug proceeds. Unsuccessful in rounding up any Native Americans, the agents set their sights on these two old men who believed they were assisting the FBI in an authorized investigation. Weil, a documented FBI confidential source for more than twenty years, set out to obtain information about people involved in what he thought was an organized crime operation, and dutifully reported his contact and information to his FBI supervisor, Special Agent Toale, who in turn disseminated the information to FBI Supervisory Special Agent Sullivan. Agent Toale prepared an official FBI 302 report documenting Weil's information, but at the time of trial that report was missing from Weil's confidential FBI informant file. Weil's contemporaneous conversations with a journalist corroborated his status as a confidential FBI source during this operation.

For a period of twenty-one months (March 1997 – November 1998), the DEA undercover sting operation unfolded, with undercover agents providing cash in return for checks from petitioners and others. The undercover agents suggested that the cash came from illegitimate sources, but the tape recordings of conversations and meetings did not contain incriminating references to drugs.[1] Throughout their dealings with these undercover operations, Weil and Garber both endeavored to obtain documents and other information so they could help build a case for the FBI against the supposed money launderers.

The indictment alleged that Weil participated in laundering $165,000 and that Garber laundered $425,000 (App. 8-9), yet both Weil and Garber were sentenced for the full amount of the laundered funds (App. 43 & App. 31). During the trial, petitioners were prohibited from asserting the defense of public authority, notwithstanding that Weil was a documented FBI informant who informed the FBI of his involvement in the conduct for which petitioners were ultimately charged.

During the defense case at trial, Weil identified $10,000 in currency which he had received from the purported undercover money launderer and kept as evidence in the course of his FBI authorized informant role. As the currency was being moved into evidence, the prosecutor

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[1] On the eve of trial, the prosecution produced new transcript versions of the tape recordings, which not only differed substantially from the original certified transcripts, but also included drug terms which were not intelligible on the recorded tapes themselves.

announced, in the presence of the jury, " . . . the agent will take possession of the money." (App. 11). The prosecutor then informed both the judge and jury that the money was being "seized" because it was "drug money." Surprisingly, the trial judge agreed, instructing defense counsel in the presence of the jury to "give that money to the government." (App. 15).

At the close of the case, the jury's deliberations were somewhat protracted, with the jury twice indicating an inability to reach a verdict, prompting the court to give a deadlock instruction, even as the jury continued to make progress toward a verdict. Without first instructing counsel, the district judge gave a modified *Allen*[2] charge (App. 16-20), despite the fact that the trial had taken eighteen days and the jury had been deliberating less than two days. Inevitably, the jury returned guilty verdicts almost immediately thereafter.

On direct appeal, the Eleventh Circuit found no fault with the trial or the sentences. The appellate court held "that there was insufficient evidence to warrant a jury instruction on the defense of public authority." (App. 3). The appellate court rejected petitioner's *Allen* charge objection. (App. 5). Petitioner Weil's sentence did not violate *Apprendi*[3] in the court's view, because "the term of imprisonment is within the prescribed statutory maximum penalty for the underlying offense." (App. 5).

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[2] *Allen v. United States*, 124 U.S. 942 (1896).

[3] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit's Restrictive Application Of The Public Authority Defense Conflicts With Other Circuits And Is Contrary To Due Process Protections.

This certiorari petition raises an issue of vital importance to the criminal justice system, arising from a court's refusal to allow a jury to determine if criminal defendants were acting pursuant to lawful public authority. Especially in today's environment of government-initiated undercover sting operations which target persons having no prior involvement in the government-designed criminal activity, the approach taken by the Eleventh Circuit to the defense of public authority is unnecessarily narrow, permitting a public authority jury instruction only if the defense can assert compelling evidence of actual authorization by a responsible government official. Yet, that narrow rule subverts the fact finding role of the jury to determine if a defendant acted under the authorization of an official having actual authority to approve the conduct at issue.

Traditionally, the validity of the public authority defense depends only on "whether the government agent in fact had the authority to empower the defendant to perform the acts in question." *United States v. Achter*, 52 F.3d 753, 755 (8th Cir. 1995). *See United States v. Fulcher*, 250 F.3d 244, 254 (3d Cir. 2001) ("defense of public authority requires reasonable reliance upon the actual authority of a government official to engage him in a covert activity."); *United States v. Blair*, 210 F.3d 285 (9th Cir. 2000) (unpublished) ("public authority defense is available when defendant has committed an otherwise

illegal act in reasonable and sincere reliance upon a statement or act of a government agent with actual legal authority to empower the commission of the illegal act in question."); *United States v. Pitt*, 191 F.3d 751, 757 (3d Cir. 1999).

The public authority defense is thus available – and must be presented to the jury for consideration – in every case in which the defendant acted in reliance on a public official who had actual authority. *United States v. Parker*, 267 F.3d 839, 843 (8th Cir. 2001). Yet, the Eleventh Circuit's required showing is far greater, requiring proof that the public official actually authorized the conduct in question. By raising the standard to require proof of actual authorization instead of limiting the showing that an official possessed authority to approve the conduct, the Eleventh Circuit undercut controlling law which compels a jury decision whenever there is any evidence, even though "weak, inconsistent, or of doubtful credibility." *United States v. Scout*, 112 F.3d 95, 960 (8th Cir. 1997). To hold otherwise, as the Eleventh Circuit does, elevates a defendant's burden to showing that the government agent approved the defendant's conduct – an altogether impossible showing when the government contends the defendant had no authority to commit.

This Court's decision in *Cheek v. United States*, 498 U.S. 192 (1991), is fundamentally at odds with the Eleventh Circuit's approach. *Cheek* explains the controlling principle that a defendant's good faith reliance on the propriety of the actions taken is enough to establish the defendant's innocent intent. That concept was undercut in this case where petitioner Weil believed he was acting pursuant to the authority of an FBI official who in fact

had authority to approve the challenged conduct. That showing is more than sufficient under constitutional standards to require the use of a public authority jury instruction.

Precluding a jury from considering the public authority issue, when an accused has made out a prima facie case of reliance on a government official with actual authority, deprives that defendant of the due process right to present a defense. *See Crane v. Kentucky*, 476 U.S. 683 (1986) (exclusion of testimony about circumstances of confession deprived defendant of right to have jury evaluate its credibility and voluntariness). Because the Eleventh Circuit law limiting the application of public authority as an available defense conflicts with the pronouncements of the other circuits regarding the quantum of proof and unreasonably limits the jury's consideration, review by this Court is in order.

II. The Use Of A Blockbuster Jury Instruction When The Jury Is Deliberating Reasonably Is Unfairly Coercive And Prejudicial.

The time has come to drastically reduce reliance on the "blockbuster" jury instruction to press a jury to reach a verdict.[4] Courts have become far too dependent on its use, resulting in the unreasonable manipulation of a jury's deliberations. Notwithstanding growing concern

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[4] In *Allen v. United States*, 124 U.S. 942 (1896), this Court approved the practice of admonishing a deadlocked jury to make further efforts to reach a verdict.

about its use,[5] the Eleventh Circuit has nonetheless continued to embrace and expand the use of the *Allen* charge, often at the expense of a defendant's Sixth Amendment right to a jury's fair and impartial deliberations. As a result, the unanimity requirement is unfairly compromised, as is evident in this case.

The Eleventh Circuit's penchant for approving the *Allen* charge, *see United States v. Chigbo*, 38 F.3d 543, 544 n.1 (11th Cir. 1994), is especially evident in this case, in which the trial court's "dynamite" instruction effectively forced a Friday afternoon verdict after less than two days of deliberations following an 18-day trial. At the time of the court's instruction, the jury had affirmatively announced that it was actively deliberating, having just changed their collective minds concerning a partial verdict. Without even notifying defense counsel that a modified *Allen* charge would be given as to one of the defendants, the trial judge proceeded to emphasize to the jury the benefit of reaching a unanimous verdict (App. 17-19). Within one hour, the jury found both defendants guilty.

The Eleventh Circuit's broad and unrestrained acceptance of *Allen* instructions is contrary to the caution encouraged by the other circuits, which carefully evaluate the coercive nature of dynamite charges based on (1) the actual language used, (2) the length of deliberation following the charge, (3) the total time of deliberations, and

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[5] *United States v. Burgos*, 55 F.3d 933, 941 (4th Cir. 1995); *United States v. Quintero-Barraza*, 57 F.3d 836, 842 (9th Cir. 1995); *United States v. Graham*, 758 F.2d 879, 883 (3d Cir. 1985); *United States v. Silvern*, 484 F.2d 879, 883 (7th Cir. 1973) (en banc).

(4) the indicia of jury pressure based on the need for further instructions. *See United States v. Smith*, 635 F.2d 716, 721 (8th Cir. 1980) (citing *United States v. Beattie*, 613 F.2d 762, 765-766 (9th Cir. 1980)). This case represents the ideal vehicle to reign in the Eleventh Circuit's expansive application of blockbuster instructions, thereby restoring uniformity among the circuits and validating the jury's duty to deliberate based on the evidence, without unnecessary interference from the court. Whereas the issue continues to divide the courts, involvement by this Court will assist courts, juries, and litigants in assuring that jury deliberations are free from unreasonable intrusion.

III. The Seizure By The Prosecution Of Defense Evidence In Open Court Unfairly Compromised The Integrity Of The Jury To Deliberate On The Basis Of The Evidence.

In an inexcusable departure from the orderly presentation of evidence, the prosecution effected the in-court seizure of defense evidence – $10,000 in United States currency – by proclaiming it to be drug money, in the presence of the jury. Rather than admonish the government for its conduct, in a money laundering case in which the jury was to determine if the defendants accepted currency represented to be drug proceeds, the trial judge agreed with the prosecution, instructing defense counsel to "give that money to the government," once again in the jury's presence. (App. 15).

The trial judge has the constitutional "responsibility of safeguarding the integrity of the trial." *United States v. Gainey*, 380 U.S. 63, 68 (1965). That neutral obligation was

conveniently ignored by the trial judge, in her haste to provide judicial approbation of the government's otherwise weak case. The combined action of the prosecutor and the approval of the court essentially stood the presumption of innocence on its head, causing the jury to conclude that the court had already determined that the petitioners were guilty of laundering drug money.

As this Court recognized in *Estelle v. Williams*, 425 U.S. 501, 505 (1976), the presumption of innocence "is a basic component of a fair trial under our system of criminal justice." *E.g., Coffin v. United States*, 156 U.S. 432, 453 (1895). This constitutional "assumption that is indulged in the absence of contrary evidence[,]" *Taylor v. Kentucky*, 436 U.S. 478, 483 n.12 (1978), carries with it the fundamental norm that "one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial." *Id.* at 485.

Just as jurors look to the guidance of the trial judge in determining how to proceed in a case, *e.g., Carter v. Kentucky*, 450 U.S. 288, 304 (1981), a judge's mid-trial announcement in a money laundering trial that the government could seize defense evidence because it is drug money is the equivalent of directing a verdict in favor of the government. This judicial comment undermines the jury's function of determining guilt beyond a reasonable doubt on the basis of the evidence. *In re Winship*, 397 U.S. 358, 364 (1970). The Eleventh Circuit's approval of this conduct in a serious criminal case calls out for supervision and review by this Court. Our adversary system cannot function when the trial judge departs from her

role as a neutral arbiter and embraces the prosecution's role. In order to protect considerations of fundamental fairness, this Court should provide guidance to trial judges in the context of their roles as neutral and impartial officers.

IV. *Apprendi* Prohibits A Sentence Enhancement Based On Evidentiary Factors Not Charged In The Indictment.

When imposing sentence based on evidentiary factors such as the amount of money involved in a money laundering scheme, a court is not free to evaluate the proof in the absence of a jury determination of the facts based on a sufficient allegation in the indictment. When an indictment limits the amount of money for the jury's consideration, a sentencing judge is not free to make a separate determination in order to reach facts not presented to the jury. To do so violates the principal objective of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), in which this Court held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to the jury and proved beyond a reasonable doubt."

Whereas the Eleventh Circuit approach has been to reject the broader application of *Apprendi* whenever the sentence is within the statutory maximum, notwithstanding the binding impact of lower sentencing guidelines, *e.g., United States v. Sanchez*, 269 F.3d 1250 (11th Cir. 2001) (en banc), other courts continue to recognize that any fact which alters a defendant's range of punishment is subject to the *Apprendi* analysis. *See United States v. Mack*, 229 F.3d

226 (3d Cir. 2000) (Becker, C.J., concurring); *United States v. Norris*, 143 F.Supp. 2d 243 (E.D.N.Y. 2001) (relevant conduct which increases a defendant's sentencing exposure must be found by the jury beyond a reasonable doubt).

Consistent with this Court's core mandate that the Due Process Clause compels the involvement of the jury with any fact that increases a criminal penalty, *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999), that the sentencing statute authorizes the penalty actually imposed does not countermand *Apprendi*. *See generally Ring v. Arizona*, 2002 WL 27836, No. 01-488 (Jan. 11, 2002) (certiorari granted to determine constitutionality of death penalty scheme in which judge decides the penalty). In this case, the Eleventh Circuit approved the use of uncharged relevant conduct to increase petitioner Weil's sentence by nearly two years. The conflict with *Apprendi* calls out for Supreme Court review as a component of national uniformity, especially where the prejudice associated with an increased sentence is uncontroverted. *See Glover v. United States*, 531 U.S. 198 (2001) (increased prison sentence satisfies prejudice prong for ineffective assistance of counsel).

CONCLUSION

The Eleventh Circuit decision in this case threatens fundamental notions of due process and individual liberty. Certiorari review is necessary to correct the

imbalance within the circuits and to restore fundamental fairness to the criminal justice system within the Eleventh Circuit.

Respectfully submitted,

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-14668

D. C. Docket No. 98-00866-CR-PAS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YALE GARBER,
STEPHEN G. WEIL,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Florida

(November 15, 2001)

Before HULL, MARCUS, and FARRIS*, Circuit Judges.

PER CURIAM:

Defendant Stephen G. Weil appeals his convictions and 83-months' sentence for one count of conspiracy to launder money represented to be drug proceeds, in violation of 18 U.S.C. § 1956(h), and two counts of money laundering, in violation of 18 U.S.C. § 1956(a)(3)(B) and § 2. Defendant Yale Garber appeals his convictions for

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* Honorable Jerome Farris, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

one count of conspiracy to launder money represented to be drug proceeds, in violation of 18 U.S.C. § 1956(h), and five counts of money laundering, in violation of 18 U.S.C. § 1956(a)(3)(B) and § 2.

I. BACKGROUND

In November 1998, a federal grand jury returned a six-count indictment against four individuals, including Weil and Garber. The first count of the indictment charged all defendants with conspiracy, from March 1997 to November 1998, to launder money represented to be drug proceeds. The indictment also charged both Weil and Garber with money laundering on July 8 and September 24, 1997, and Garber with money laundering on March 23, March 30, and July 9, 1998. After a joint jury trial, Weil and Garber were convicted of all counts charged. The district court sentenced Weil to 83 months' imprisonment and Garber to 63 months' imprisonment, both sentences to be followed by a period of supervised release.

II. CONVICTIONS

On appeal, Weil and Garber challenge their convictions, arguing that (1) the district court erred in declining to instruct the jury on the defense of public authority and in otherwise preventing them from relying on that defense, (2) the district court erred in admitting into evidence certain transcripts of conversations the government had tape-recorded, (3) the district court erred in admitting into evidence testimony regarding the drug trafficking of Weil and Garber's co-conspirator, (4) the

district court erred in quashing a subpoena for the testimony of a news reporter on the ground of "reporter's privilege," (5) the district court erred in declining to admit into evidence photocopies of notes which Weil prepared, (6) the district court erred in denying their motions for a mistrial, which Weil and Garber moved for based on certain comments made during the trial by the prosecutor and district court judge, (7) the district court erred in giving the jury an *Allen* charge, and the charge given was "inherently coercive," and (8) the evidence is insufficient to support their convictions.

After a thorough *de novo* review of the trial record in this case and the arguments of the parties, both in their briefs and at oral argument, we conclude that all of these claims regarding Weil's and Garber's convictions lack merit. Among other things, we conclude that the district court properly found that there was insufficient evidence to warrant a jury instruction on the defense of public authority. No error exists in a court's refusal to give an instruction for which an evidentiary foundation is lacking. *See United States v. Elkins*, 885 F.2d 775, 788 (11th Cir. 1989).

III. WEIL'S SENTENCE

On appeal, Weil also challenges his 83-months' sentence. In particular, Weil argues that the district court erred in sentencing him based on $450,000 in laundered monetary instruments when he was convicted for only $165,000 because he was not an active participant in the other money-laundering transactions, and the additional amount of laundered monies was not foreseeable to him.

Weil also contends that his 83-months' sentence violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the district court's use of laundered funds beyond the amount charged in his indictment increased his sentence beyond the applicable sentencing guideline range.

In sentence appeals, we review the district court's findings of fact for clear error and its application of the sentencing guidelines to those facts *de novo*. *United States v. Exarhos*, 135 F.3d 723, 729 (11th Cir. 1998). We review arguments not raised before the district court for plain error. *See United States v. Harness*, 180 F.3d 1232, 1234 (11th Cir. 1999).

Upon review of the trial record and the parties' arguments, we find no reversible error in Weil's sentence. A defendant is liable for reasonably foreseeable acts of others committed in furtherance of the conspiracy of which the defendant has been convicted. *United States v. Davis*, 117 F.3d 459, 463 (11th Cir. 1997). Because Weil admitted that he was aware of the money laundering transactions between Garber and Elyahu Matalon (another co-conspirator) as he wanted to "bring in" the case, the district court did not clearly err in holding Weil accountable for the relevant conduct of his co-conspirators given the particular circumstances of this case shown at trial.

We also conclude that there is no *Apprendi* error in Weil's sentence. We recognize that the Supreme Court has held that any fact other than a prior conviction that increases the penalty for a crime beyond the prescribed statutory maximum, must be submitted to the jury and proved beyond a reasonable doubt. *Apprendi*, 530 U.S. at

489. However, there is no *Apprendi* error, plain or otherwise, where the term of imprisonment is within the prescribed statutory maximum penalty for the underlying offense. *See United States v. Sanchez*, ___ F.3d ___, Nos. 00-13347, 00-13447, slip op. 439, at 477 (11th Cir. Oct. 17, 2001); *United States v. Gerrow*, 232 F.3d 831, 834 (11th Cir. 2000), *cert. denied*, ___ S. Ct. ___, No. 00-9373, (Oct. 1, 2001). The statutory maximum for defendant Weil's money-laundering crime is 20 years. *See* 18 U.S.C. § 1956(a)(3). Because Weil's 83-months' sentence does not exceed the prescribed statutory maximum penalty of 20 years for his money laundering convictions, there is no *Apprendi* error in his sentence. *See Sanchez*, ___ F.3d at ___; *Gerrow*, 232 F.3d at 834. Additionally, this Court has held that *Apprendi* does not apply to calculations under the Sentencing Guidelines. *See e.g., Sanchez*, ___ F.3d ___; *United States v. Nealy*, 232 F.3d 825, 829 n. 3 (11th Cir. 2000).

IV. CONCLUSION

In conclusion, we affirm Weil's and Garber's convictions and Weil's sentence.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	**CASE NO. 98-866-Cr-Middlebrooks**
v.	)	**18 U.S.C. §1956(h)**
SERGIO PAOLO MASOCCO,	)	**18 U.S.C. §1956(a)(3)(B)**
STEPHEN G. WEIL,	)	**18 U.S.C. §2**
YALE GARBER,	)	
and	)	**INDICTMENT**
ELYAHU MATALON,	)	
a/k/a "Eli"	)	
	)	

The Grand Jury charges that:

COUNT I

From in or about March, 1997, to on or about November 13, 1998, at Miami, Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

SERGIO PAOLO MASOCCO,
STEPHEN G. WEIL,
YALE GARBER,
and
ELYAHU MATALON,
a/k/a "Eli"

did knowingly and intentionally combine, conspire, confederate and agree with each other and with persons unknown to the Grand Jury to knowingly conduct and attempt to conduct financial transactions affecting interstate and foreign commerce, which transactions involved property represented by a law enforcement officer to be

the proceeds of a specified unlawful activity, that is, the receiving, concealment, buying, selling and otherwise dealing in controlled substances punishable under the laws of the United States, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(3)(B).

All in violation of Title 18, United States Code, Section 1956(h).

COUNT 2-3

On or about the dates set forth below, at Miami, Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

SERGIO PAOLO MASOCCO,
STEPHEN G. WEIL,
and
YALE GARBER

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the transfer of United States currency, in the amounts set forth below, which transaction involved property represented by a law enforcement officer to be the proceeds of a specified unlawful activity, that is, the receiving, concealment, buying, selling and otherwise dealing in controlled substances, punishable under the laws of the United States, knowing that the transaction

was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of said specified unlawful activity:

COUNT	DATE	APPROXIMATE AMOUNT OF FUNDS IN U.S. DOLLARS
2	7/8/97	$ 50,000.00
3	9/24/97	$115,000.00

All in violation of Title 18, United States Code, Sections 1956(a)(3)(B) and 2.

COUNT 4-6

On or about the dates set forth below, at Miami, Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

YALE GARBER,
and
ELYAHU MATALON,
a/k/a "Eli"

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the transfer of United States currency, in the amounts set forth below, which transaction involved property represented by a law enforcement officer to be the proceeds of a specified unlawful activity, that is, the receiving, concealment, buying, selling and otherwise dealing in controlled substances, punishable under the laws of the United States, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of said specified unlawful activity:

COUNT	DATE	APPROXIMATE AMOUNT OF FUNDS IN U.S. DOLLARS
4	3/23/98	$ 50,000.00
5	3/30/98	$100,000.00
6	7/9/98	$110,000.00

All in violation of Title 18, United States Code, Sections 1956(a)(3)(B) and 2.

FORFEITURE

1. As a result of the foregoing offenses alleged in Counts One through Six, herein alleged and incorporated by reference for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982, the defendants,

SERGIO PAULO [sic] MASOCCO,
STEPHEN G. WEIL,
YALE GARBER,
and
ELYAHU MATALON,
a/k/a "Eli"

shall, upon conviction of each such offense, forfeit to the United States all property, real and personal, involved in each such offense and all property traceable to such property, for which the defendants are jointly and severally liable, which property includes, but is not limited to, $425,000 in United States currency and all interest and proceeds traceable thereto in that such sum in aggregate is property which was involved in the aforementioned offenses or is traceable to such property.

2. In the event that any property described above as being subject to forfeiture, as a result of any act or omission by the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to or deposited with a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of said defendant up to the value of the above described property.

All in violation of Title 18, United States Code, Section 982(a)(1).

_____
FOREPERSON

/s/ _____
THOMAS E. SCOTT
UNITED STATES ATTORNEY

/s/ _____
MARY V. KING
ASSISTANT UNITED STATES
ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

United States

vs.

Yale Garber

Excerpt of Trial Testimony

Day 15

May 8, 2000

Pages 89 92

[89] that, sir.

A. It appears to be the entire $10,000 difference between the 40 and the $50,000 in cash that I received from who I thought was Paul Aprea.

Q. Is that the money, the exact money you received, sir?

A. Yes.

MR. TUCKER: Your Honor, I would move Defendant's 11 into evidence with the caveat that we can substitute copies.

MS. KING: Absolutely no objection. And the agent will take possession of the money.

MR. TUCKER: Well, I object to that, your Honor.

THE COURT: On what grounds?

MR. TUCKER: What ground does the agent have to take possession of the money? What relevance is that to this trial and these issues?

MS. KING: If it is drug money, Judge, it is being seized, period.

MR. TUCKER: I object to that comment. I ask that it be stricken.

THE COURT: Counsel, let's focus on this trial, please.

Exhibit 11 is admitted into evidence.

[90] MR. TUCKER: May I publish, Your Honor?

THE COURT: Certainly.

Q. Now, sir, did there come a time when you engaged Paul in further conversation in reference to his work for American Airlines?

A. Yes.

Q. And what did he tell you about American Airlines?

A. He told me that he was a Crew Chief at American Airlines for baggage and cargo coming into the Miami area.

Q. And what was – did you have an occasion to call American Airlines and find out any information about Paul?

A. Yes.

Q. Could you find his name?

A. No.

Q. And during the course of your conversations with Paul throughout the summer, what was his interest as expressed to you?

A. His major interest was –

MS. KING: Objection as to his interest. Form of the question.

Q. Based upon your observations during the time of the conversations, what was his interest?

A. He told me –

[91] MS. KING: Objection. Tapes speak for themselves.

MR. TUCKER: We made the very same objections, Judge.

THE COURT: Overruled.

A. He told me that he was primarily interested in laundering his money through the Seminole Indians, and he wanted me to take it to the Indians.

Q. Sir, tell us what happened with the $100,000 in September.

A. Throughout the summer he kept saying he wanted to do another transaction. Just right after Labor Day, or right around Labor Day, he told me be wanted to do 100,000 or $125,000 transaction, this was approximately three months after the first transaction, and he wanted to do it with the Seminole Indians.

Q. Did you have the ability to do that, sir?

A. No, I did not.

Q. How did you go about doing that, sir?

A. Well, I delayed him as long as I could. I told him I was going fishing, I was going out of town, I told him I was going to the Cayman Islands just about every week, I was flying down there; I told him if he had a million dollars or more I welcomed him to come [92] with me to the Cayman Islands, told him we would go by private plane, sometimes by commercial plane.

Q. Now, were you able to affect the transfer of the money, sir? Were you able to contact somebody to assist you?

A. No. I did not. I kept delaying Agent Mangone who I knew as Paul Aprea, for about a week or so, and he kept pressing me to do $100,000. I told him the Indians were not interested in small amounts, bring a million or more; I told him they turned it down, rejected it. He wanted to know if I had anybody else to do it with, and I didn't have anybody else to do it with, until somebody that I knew called me and said that they needed a $125,000 loan.

Q. Who was that, sir?

A. Leo From, F-r-o-m.

MR. TUCKER: This would be a good place to break, Your Honor.

Let's just give Mr. Ehrlich –

THE COURT: Let's take a ten-minute break if we can so Mr. Ehrlich can have a rest. We'll be back promptly at 20 after.

And, Mr. Callahan, let's give that money to the government, okay?

Remember the three rules: Don't talk to

App. 16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

United States

vs.

Yale Garber

Excerpt of Trial Testimony

Day 18

May 12, 2000

Pages 28 – 33

[28] **MS. KING:** What generally happens in my experience has been you take it, seal it, and then read it or have it published at the end of the deliberations.

THE COURT: Why can't I just take it now since I have instructed them that they have to treat both defendants separate and distinctly as if the two of them were individually on trial?

MS. KING: You can, Judge.

THE COURT: I tell them that I have been reading their notes. I understand they are working. They could then say they have delivered one part of their work.

MS. KING: Either way is permissible, Judge.

THE COURT: And then I can turn to them and lead into Mr. Weil.

So what I will do as to the first note, I will just say: Please return to the courtroom. I will take the verdict as to Mr. Garber and will provide you further instructions as to Mr. Weil.

MS. KING: That's fine, Judge.

THE COURT: Mr. Mitchell, if you would bring the jury in.

[The jury enters the courtroom at 2:58 p.m.].

THE COURT: Good afternoon, members of the jury. Welcome back. Please have a seat.

Ms. Davis, I understand you are the foreperson. [29] That is not an easy job to do. I understand you have a verdict as to Mr. Garber.

Do you have the verdict?

THE FOREPERSON: Your Honor, the jury had decided upon the verdict. They changed their minds on that particular verdict. So as it stands right now we do not have a verdict to either.

THE COURT: I know you all have been deliberating very hard. I am going to ask you to go back into the jury room to continue your deliberations because obviously there is thinking going on.

It is hard to be a judge. I share that very much with you all. If you would like, I could ask Mr. Mitchell to escort you all and you could take a walk around the courthouse if you would like to do that and just get outside. That might help all of you to just get out of that little room, breathe some air outside and come back refreshed.

When you come back I have a few additional comments that I would like for you all to consider as you do so. This is an important case. The trial has been expensive in time. I do not need to tell you all that. Money and emotional strain to both the defense and the prosecution. If you should fail to agree upon a verdict the case will be left open and it may have to be tried [30] again.

Obviously another trial would increase the cost to both sides and there is no reason to believe that the case can be tried again by either side any better or more exhaustively than it has been tried before you. Any future jury must be selected in the same manner and from the same source as you were chosen. And there is no reason to believe that the case could ever be submitted to twelve men and women more conscientious, more impartial, more competent to decide it or that more or clearer evidence could be produced.

If a substantial majority of your number are in favor of a conviction, those of you who disagree should reconsider whether your doubt is a reasonable one, it appears to make no effective impression on the minds of others.

On the other hand, if a majority, or even a lesser number of you, are in favor of an acquittal, the rest of you should ask yourselves again, and most thoughtfully, whether you should accept the weight and sufficiency of evidence which fails to convince your fellow jurors beyond a reasonable doubt.

Remember, at all times no juror is expected to give up an honest belief he or she may have as to the weight or the effect of the evidence because each of you [31] must decide the case for yourself. But after full deliberation

and consideration of the evidence in the case, it is your duty to agree upon a verdict if you can do so. You must also remember that if the evidence in the case fails to establish guilt beyond a reasonable doubt the defendant should have your unanimous verdict of not guilty. You may be as leisurely in your deliberations as the occasion may require and should take all the time that you feel is necessary.

I will be happy to provide all of the notes that have been requested so that your employers will know that you have been taking this time to serve in this important function.

I would ask you to follow your leader, Ms. Davis. And, Ms. Davis, on behalf of everybody on this jury, it is not an easy task to be the foreperson of the jury. Your job is to keep the discussion going. To keep everybody friendly. To give everyone a chance to be heard to express their thoughts. And I think I say on behalf of all who have selected you a deep vote of gratitude.

So if you will follow Ms. Davis back to the jury room and if you would like to go for a walk or just a portion of you would like to go for a walk with Mr. Mitchell, he will – we could arrange to have – if part of you want to go for a walk and part don't want to go [32] for a walk, if we could have the marshal stay with those that want to remain. But you all might find it is a lovely day outside. I went for a walk myself and it was just very nice to get outside. But if you want to go for a walk, have a nice time. Just don't talk about the case while you are taking the walk. Let it float in the back.

I would ask you to retire once again with these comments in mind to be applied of course in conjunction with all of the other instructions I have previously given to you.

[The jury leaves the courtroom at 3:07 p.m.].

MR. KUEHNE: Your Honor, with regard to your instructions, I had no prior notice that you were going to be giving an Allen or modified as to Mr. Garber. The jury never said anything about being able to reach a decision on Mr. Garber. In fact, it is obvious they are still deliberating on Mr. Garber.

There was no opportunity to have you consult with me or Mr. Garber. We were here to receive a verdict. The juror said, and I paraphrased. We did have a verdict but we have changed our minds. We do not have a verdict. There was not the slightest indication that they are hung, that they are in dispute. They were deliberating.

For the court to give an Allen charge involving Mr. Garber when the jury was plainly deliberating, was not [33] hung and had expressed no reservation about reaching a verdict about Mr. Garber is improper and without notice to me, Mr. Garber's lawyer, to have an opportunity to provide input. This juror has just been told – this juror has just been given an Allen charge to Mr. Garber without the slightest reason for that. And I object.

I don't know what caused the court to consider giving an Allen charge without consulting with counsel about that matter when the jury came up with something that, frankly, was unexpected. And I do not believe an

Allen charge was appropriate for Mr. Garber notwithstanding any deliberations that may or may not have reached an impasse for the codefendant.

MS. KING: It was nice for Mr. Kuehne to object while you were giving the modified Allen charge which I didn't hear.

Secondly, the court could inquire what their position was and is.

Thirdly, you would have had to give the jury the instructions to go back and deliberate anyway. So I see no harm anyway.

THE COURT: If you wanted me to stop, Mr. Kuehne, you needed to tell me to stop.

MR. KUEHNE: Right, Judge. I'm supposed to correct Your Honor while the jury is sitting.

UNITED STATES DISTRICT COURT

Southern District of Florida

UNITED STATES OF AMERICA

V.

YALE GARBER

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Filed Aug. 30, 2000)

Case Number:
98-866-CR-SEITZ/003

Mary V. King, AUSA/Benedict P. Kuehne, Esq.
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s) _____
[ ] pleaded nolo contendere to count(s) _____ which was accepted by the court.

[X] was found guilty on count(s) 1, 2, 3, 4, 5 and 6 after a plea of not guilty.

Title & Section	Nature of Offense	Date Concluded	Count Number(s)
18 USC 1956(h)	Conspiracy to commit money laundering.	11/13/98	1
18 USC 1956(a)(3)(B) & Sec. 2	Money laundering	11/13/98	2, 3, 4, 5, 6

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) _____

[ ] Count(s) _____ [ ] is [ ] are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec.
132-16-9136

Defendant's Date of [Birth]
11/22/25

Defendant's USM No.:
58917-004

Defendant's Residence Address:
6006 Royal Poinciana Lane
Tamarac, FL 33319

Defendant's Mailing Address:
Same

8/22/00
Date of Imposition of Judgment

/s/ Patricia A. Seitz
Signature of Judicial Officer
Patricia A. Seitz, U.S. District Judge
Name and Title of Judicial Officer

August 28, 2000
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total total [sic] term of **63 months**.

As to each Count 1, 2, 3, 4, 5 and 6, to run concurrently.

[X] The court makes the following recommendations to the Bureau of Prisons: Defendant be placed in minimum security facility in Florida or Southeast Region.

[ ] The defendant is remanded to the custody of the United States Marshal.

[ ] The defendant shall surrender to the United States Marshal for this district:

[ ] at _____ [ ] a[ ] p.m. on _____

[ ] as notified by the United States Marshal.

[X] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

[X] before 2 p.m. on October 11, 2000

[ ] as notified by the United States Marshal.
[ ] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years, each Count, concurrent

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

[ ] The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

[X] The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the United States Probation Officer.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 600.00	$	$

[ ] If applicable, restitution amount ordered pursuant to plea agreement ... $

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

[ ] The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

[ ] The interest requirement is waived.

[ ] The interest requirement is modified as follows:

RESTITUTION

[ ] The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such a determination.

[ ] The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	*Total Amount of	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Totals:	$_____	$	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A [X] in full immediately; or

B [ ] $ _____ immediately, balance due (in accordance with C, D, or E); or

C [ ] not later than _____; or

D [ ] in installments to commence ____ day(s) after the date of this judgment. If the event the entire

amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or.

E [ ] in _____ (*e.g. equal, weekly, monthly, quarterly*) installments of $ _____ over a period of ____ year(s) to commence ____ day(s) after the date of this judgment.

The defendant will be credited for all payments previously made toward any criminal monetary penalties imposed. Special instructions regarding the payment of criminal monetary penalties:

[ ] The defendant shall pay the cost of prosecution.

[X] The defendant shall forfeit the defendant's interest in the following property to the United States:

The property set forth in the Preliminary Order of Forfeiture, dated August 22, 2000, and incorporated by reference herein as a part of this Judgment.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

STATEMENT OF REASONS

[ ] The court adopts the factual findings and guideline application in the presentence report.

OR

[X] The court adopts the factual finding and guideline application in the presentence report except (see attachment, if necessary): The Court did not find this defendant was an organizer or leader pursuant to 3B1.1(b). The court found the funds involved were $425,000.

Guideline Range Determined by the Court:

Total Offense Level: 26

Criminal History Category: I

Imprisonment Range: 63 to 78 months

Supervised Release Range: 2 to 3 years

Fine Range: $ 12,500 to $ 850,000

[X] Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ N/A

[ ] Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

[ ] For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the

economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the forseeable future under any reasonable schedule of payments.

[ ] Partial restitution is ordered for the following reason(s):

[X] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

[ ] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

[ ] The sentence departs from the guideline range:

[ ] upon motion of the government, as a result of defendant's substantial assistance.

[ ] for the following specific reason(s):

UNITED STATES DISTRICT COURT

Southern District of Florida

UNITED STATES OF AMERICA

V.

STEPHEN G. WEIL

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
(Filed Oct. 12, 2000)
Case Number:
98-866-CR-SEITZ

Mary V. King,
AUSA/David K. Tucker, Esq.
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s) _____

[ ] pleaded nolo contendere to count(s) _____ which was accepted by the court.

[X] was found guilty on count(s) 1, 2 and 3 after a plea of not guilty.

Title & Section	Nature of Offense	Date Concluded	Count Number(s)
18 USC 1956(h)	Conspiracy to launder monetary instruments	11/13/98	1
18 USC 1956(a)(3)(B)	Laundering of monetary instruments	11/13/98	2 and 3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) _____.

[ ] Count(s) _____ [ ] is
[ ] are dismissed on the motion of the United States.

IT IS FURTHER ORDER that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. 056-30-0245

Defendant's Date of [Birth] 3/4/1936

Defendant's USM No.: 11615-004

Defendant's Residence Address:

3414 Heather Terrace

Lauderhill, FL 33319

Defendant's Mailing Address:

Same

10/6/00
Date of Imposition of Judgment

/s/ Patricia A. Seitz
Signature of Judicial Officer

Patricia a. Seitz, U.S. District Judge
Name and Title of Judicial Officer

10-11-00
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total total [sic] term of 83 months.

As to each Count 1, 2 and 3, to run concurrently.

[X] The court makes the following recommendations to the Bureau of Prisons:
Defendant be placed at FPC Miami. The court will defer to the BOP to determine whether Defendant needs to participate in a substance abuse treatment program.

[ ] The defendant is remanded to the custody of the United States Marshal.

[ ] The defendant shall surrender to the United States Marshal for this district:

[ ] at _____ [ ]
a [ ] p.m. on _____

[ ]as notified by the United States Marshal.

[X] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

[X] before 2 p.m. on November 6, 2000

[ ] as notified by the United States Marshal.

[ ] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one

drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

[ ] The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

[X] The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer 10 days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the United States Probation Officer.

The defendant shall not incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

The defendant shall obtain prior approval from the United States Probation Officer before entering into any self-employment.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$300.00	$	$

[ ] If applicable, restitution amount ordered pursuant to plea agreement..... $_____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ $_____$.

The defendant shall pay interest on any fine more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

[ ] The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

[ ] The interest requirement is waived.

[ ] The interest requirement is modified as follows:

RESTITUTION

[ ] The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

[ ] The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment columns below.

Name of Payee	*Total Amount of	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Totals:	$_____	$_____	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A [X] In full immediately; or

B [ ] $_____ immediately, balance due (in accordance with C. D. or E); or

C [ ] not later than _____; or

D [ ] in installments to commence _____ days after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E [ ] in _____ (*e.g., equal, weekly, monthly, quarterly*) installments of $_____ over a period of

_____ year(s) to commence _____ days after the date of this judgment.

The defendant will be credited for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

[ ] The defendant shall pay the cost of prosecution.

[X] The defendant shall forfeit the defendant's interest in the following property to the United States:

The property set forth in the Preliminary Order of Forfeiture, dated August 22, 2000, and incorporated by reference herein as part of this Judgment.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

STATEMENT OF REASONS

[ ] The court adopts the factual findings and guideline application in the presentence report.

OR

[X] The court adopts the factual finding and guideline application in the presentence report except (see attachment, if necessary):

The Court entered a finding that the amount of attributed to the Defendant is $425,000. Pursuant to Section 2S1.1(b)(2)(D), if the value of the funds was more than $350,000, the offense level is increased by 3 levels. The Court also entered a finding that the Defendant did not obstruct justice.

Guideline Range Determined by the Court:

Total Offense Level: 26

Criminal History Category: III

Imprisonment Range: 78 to 97 months

Supervised Release Range: 2 to 3 years

Fine Range: $12,500 to $125,000

[X] Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ N/A

[ ] Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

[ ] For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a

restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

[ ] Partial restitution is ordered for the following reason(s):

[X] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

[ ] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons:

OR

[ ] The sentence departs from the guideline range:

[ ] upon motion of the government, as a result of defendant's substantial assistance.

[ ] for the following specific reason(s):